IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 705 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

USMANKHAN M PATHAN

Versus

DIST. DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 705 of 1989

MR NK MAJMUDAR for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/02/2003

ORAL JUDGEMENT

The petitioner, in this petition, has challenged the judgement and order passed by the Gujarat Civil Services Tribunal in Appeal No.456/1987 on 9-5-1988

confirming the order passed by the District Development Officer, Panchmahal, Godhra in Appeal No.14/1986, who in turn has confirmed the order passed by the Deputy District Development Officer, Panchmahal, Godhra.

2) It is the case of the petitioner that the petitioner was originally employed as Branch Post Master of village, Khadgodhra, Taluka Balasinor of Kheda District from 30th July, 1980 to 29th July, 1981. After his tenure as Post Master was over, a complaint was lodged against him on 16-12-1982 in connection with misappropriation of Government money. Before the said complaint was decided, the petitioner was selected for the post of Talati-cum-mantri in the District Panchayat, Panchmahal, Godhra, and he was appointed in the service of the Panchayat. The complaint was decided on 14th May, 1986 whereby he was convicted. However, he was given the benefit under the Probation of Offenders' Act. Subsequently this fact came to the knowledge of the respondent-panchayat and a showcause notice was issued on the petitioner on 9-7-1986 calling upon him to explain as to why he should not be removed from the panchayat service. The petitioner has given detailed reply on 24-7-1986 and denied the charges levelled against him. After considering the reply filed by the petitioner, an order was passed by the Deputy District Development Officer on 3-10-1986 whereby he was removed from the service of the Panchayat.

3) Being aggrieved by the said order of the Deputy District Development Officer the petitioner preferred an appeal before the District Development Officer and the said appeal came to be dismissed on 16-7-1987.

4) Being further aggrieved by the said order, the petitioner preferred second appeal before the Gujarat Civil Services Tribunal at Gandhinagar, challenging the order of removal. The Tribunal has elaborately discussed the relevant provisions of the Service Rules of the Panchayat, as well as the facts and circumstances of the case and confirmed the order passed by the District Development Officer and the order of removal of the petitioner from service was confirmed by the Tribunal.

5) Being aggrieved by the said order of the Tribunal, the petitioner has filed the present petition before this Court, praying for quashing and setting aside the order of removal from service.

6) Heard Mr.N.K.Majmudar, the learned advocate appearing for the petitioner. It has been contended by

him that the petitioner was earlier in employment of the Postal Department. In fact, in the panchayat service it was his substantive appointment and in the earlier criminal case he was given benefit of Probation of Offenders Act. In this view of the matter, the order of removal was not called for in the facts and circumstances of the case. The order of removal was, therefore, required to be quashed and set aside.

7) He has further submitted that while passing the order of removal, the respondents have placed reliance on Rule 4(3) (ii) of the Gujarat Panchayat's Service (Classification and Recruitment) Rules, 1967 which had no application to the facts of the present case. He has further submitted that the petitioner was already appointed in the panchayat service and when he was appointed in the panchayat service, he was not convicted by any Court. Thus, the said Rules cannot be pressed into service for the purpose of removing the petitioner from service of the Panchayat. Mr.Majmudar has further submitted that since the petitioner was given the benefit of Probation of Offender's Act and since he has not suffered imprisonment even for a day. it could not have been said that the petitioner was disqualified to be continued in panchayat service. It was also submitted by him that when the petitioner, in the criminal proceedings, was given a benefit under the Probation of Offender's Act, the disqualification if any attached to the conviction of the petitioner would be treated as having been removed and hence on that count, the petitioner's services cannot be terminated. Mr.Majmudar has further raised the plea regarding the double penalty as he has already been removed from the postal services earlier and if the impugned order of removal is upheld by the Court, it would amount to a case of double jeopardy even on this court also, the order is required to be quashed and set aside. He has further submitted that the authorities while passing the order of removal has mainly emphasized that the petitioner was convicted and the fact regarding conviction and pendency of the proceedings were not disclosed and on that count he was removed from the service. But for that purpose, a simple showcause notice is not enough and full-fledged inquiry ought to have been initiated against the petitioner before removing him from service and so the order of removal should be quashed and set aside or in the alternative the matter may be remanded to the authorities for holding the inquiry and for passing the order afresh. In support of his submissions, Mr.Majmudar has relied on the decision of the Hon'ble Supreme Court in the case of Shankardas v. Union of India and another, AIR 1985 Supreme Court, 772,

wherein it is held that Section 12 of the Probation of Offenders' Act provides that notwithstanding anything contained in any other law, a person found guilty of offences and dealt with under the provisions of Section 3 or Section 4 "shall not suffer disqualification" attaching to a conviction for an offence under such a law. The order of dismissal from service consequent upon a conviction is not a disqualification within the meaning of Section 12. It was further held in that case that Clause (a) of the second proviso to Article 311(2) of the Constitution of India confers on the Government, the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge. But, that power like every other power has to be exercised fairly, justly and reasonably. On the basis of this judgement Mr.Majmudar has contended that the power exercised by the authorities in the present case, cannot be said to be exercised justly, properly or reasonably. Even otherwise simply on the basis of his conviction his present services cannot be terminated.

8) He has further relied upon the decision of the Hon'ble Supreme Court in the case of Rajbir v. State of Haryana reported in AIR 1985, S.C.1278, wherein it is held that "the person who has been given the benefit under the Probation of Offenders Act, the conviction would not affect his services." Since the petitioner was also given the benefit under the Probation of Offenders Act, he should not be removed from service even after his conviction.

10) I have heard Mr.N.K.Majmudar, the learned advocate appearing for the petitioner at length, I have also gone through the orders passed by the authorities below and the judgement cited before me, I am of the opinion that the Tribunal has considered all the aspects raised by Mr.Majmudar before me and after careful consideration of all the relevant facts and materials the orders passed by the authorities were confirmed by the Tribunal. The Tribunal has elaborately discussed the relevant provisions of the Panchayat (Discipline and Appeal) Rules, as well as Panchayat Service (Classification and Recruitment) Rules and have also considered the proviso to Article 311(2) of the Constitution of India and thereafter it has come to the conclusion that the orders passed by the Disciplinary Authority did not suffer from any infirmity on the ground that it was arbitrary or whimsical. The Tribunal has rightly come to the conclusion that the petitioner could not be returned to the panchayat service, after the facts construing his conduct have come to the notice of the

disciplinary Authority, especially when such a conduct had led his conviction on a criminal charge and which has relevance not only to his fiduciary duty as Talati in the panchayat service but constitute a disqualification under the Rules governing his recruitment. Such a finding arrived at by the Tribunal cannot be held to be perverse or unreasonable, which warrants this Court to exercise its extraordinary writ jurisdiction under Article 226 or 227 of the Constitution of India. The authority cited by Mr.Majmudar would not render any assistance to the petitioner as in the present case, it is not only the conviction but the facts regarding earlier criminal proceedings, as well as, conviction were not disclosed by the petitioner before seeking appointment in the panchayat. Such a grievous misconduct can never be tolerated in an organisation and even if it is assumed that there may be some procedural lapses on the part of the Authorities. Such lapses can be and should be condoned looking to the nature and gravity of the misconduct shown by the petitioner.

11) Having regard to the facts and circumstances and taking overall view of the matter, I do not find any substance or merit in the present case and hence it is dismissed. Rule is discharged with no order as to costs.

(K.A.Puj, J.)
/malek